

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DR MANAGEMENT, LLC, et al.,

No. C 05-1010 MMC (MEJ)

Plaintiff(s),

vs.

**ORDER FOR DEFENDANT TO
PROVIDE DECLARATION**

UNITED STATES OF AMERICA,

Defendant(s).

On September 12, 2007, the Court conducted a telephonic conference regarding the IRS' 30(b)(6) deposition. After the conference, the Court ordered Defendant's counsel to provide a declaration stating that all facts related to the IRS' decision have been provided to Plaintiffs. (Doc. #39.) After receiving Defendant's declaration, Plaintiffs filed a request that the Court order Defendant to provide a proper declaration. (Doc. #48.) In their request, Plaintiffs argued that the declaration was insufficient for three reasons: (1) the declarant is not the deponent; (2) the declaration is not properly constructed and contains unacceptable qualifications; and (3) the declaration does not reflect the factual statement agreed to by the government. (Doc. #48 at 1.) Based on Plaintiffs' arguments, the Court requested that the parties provide further briefing to address these issues.

The Court is now in receipt of the parties' further briefing regarding the government's

1 declaration. (Doc. ##68, 72.) Upon review of the parties' briefing, the Court finds that Defendant's
2 counsel's declaration does not meet with the spirit of the September 12 telephonic conference.
3 While counsel did respond to the literal reading of the Court's order, it was the Court's intention that
4 Defendant provide a declaration from the deponent. Further, Plaintiffs have raised the argument that
5 a declaration from Defendant's counsel does not bind the government. Although the Court provided
6 Defendant the opportunity to address this argument, it did not. Accordingly, the Court ORDERS
7 Defendant, not Defendant's counsel, to provide a declaration that must (a) be made by a witness
8 having personal knowledge of the facts stated therein; (b) state facts that would be admissible
9 evidence (rather than hearsay or the declarant's opinions or conclusions); and (c) affirmatively show
10 that the witness would be competent to testify at trial. In the declaration, the witness shall state that
11 the facts relied on by the IRS to issue the FPAA's were derived from information provided to the IRS
12 by Plaintiffs. Defendant shall provide the declaration by November 14, 2007.

13 **IT IS SO ORDERED.**

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15 Dated: November 1, 2007


16 MARIA-ELITA JAMES
17 United States Magistrate Judge
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